



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Anchorage Fish & Wildlife Field Office
605 West 4th Avenue, Room G-61
Anchorage, Alaska 99501-2249



In reply refer to:
AFWFO

December 30, 2010

Cindi Godsey
United State Environmental Protection Agency
Room 537, Federal Building
222 West 7th Avenue, # 19
Anchorage, AK 99513-7588

Re: Statewide General Permit No. AKG371000 (*Consultation number 2010-0072*)

Dear Ms. Godsey,

The US Fish and Wildlife Service (the Service) has reviewed the Environmental Protection Agency's (EPA) draft general permit (GP) AKG371000 authorizing discharges from medium size suction dredge placer mining, and has considered the potential for impacts of this action on threatened and endangered species listed under the Endangered Species Act (ESA). As detailed below, the Service recommends: 1) the expansion of prohibited areas to include federally designated critical habitat for northern sea otters (*Enhydra lutris kenyoni*) and polar bears (*Ursus maritimus*), 2) the addition of important Steller's eider marine habitat outside of federally designated critical habitat and, and 3) the expansion of individual permit requirements to include dischargers proposing to operate within polar bear critical habitat.

Currently, part C. Prohibitions of the proposed draft GP states:

This general permit does not apply to facilities that are proposed to be located in National Parks System Units (i.e., Parks and Preserves), National Monuments, National Sanctuaries, National Wildlife Refuges, National Conservation Areas, National Wilderness Areas, National Critical Habitat Areas, within one nautical mile of a Steller sea lion rookery or haulout area, or waters adjacent to areas designated as wild under the Wild & Scenic Rivers Act.

National Critical Habitat Areas have been designated for both the spectacled and Steller's eiders under the Endangered Species Act (ESA). A map in Appendix B shows the general areas of the habitat. If your facility is proposed for any of the following quadrangles:

Wainwright	Solomon	St. Lawrence	Hooper Bay
Point Lay	Norton Bay	Chignik	Marshall
Point Hope	Unalakleet	Cold Bay	Baird Inlet
De Long Mountains (D-4, D-5)	St. Michael	Port Moller	Nunivak Island
			Kuskokwim Bay

please consult the Fairbanks office of the US Fish and Wildlife Service (USFWS) at (907) 456-0499 or the Federal Register at 66 FR 8849 February 2, 2001, and 66 FR 9145 February 6, 2001, for further details.

- 1) **We recommend the Prohibitions section (Part I. C.) explicitly exclude critical habitat designated for sea otters (<http://alaska.fws.gov/fisheries/mmm/seaotters/criticalhabitat.htm>) and polar bears (http://alaska.fws.gov/fisheries/mmm/polarbear/esa.htm#critical_habitat) as well as critical habitat for Steller's and spectacled eiders. Quadrangles containing designated critical habitat for these species include:**

ADAK	DEMARCATON POINT	MEADE RIVER	SHISHMAREF
AFOGNAK	FALSE PASS	MT. KATMAI	SIMEONOF ISLAND
AMUKTA	FLAXMAN ISLAND	MT. MICHELSON	SOLOMON
ATKA	GARELOI ISLAND	NOATAK	ST. LAWRENCE
ATTU	HARRISON BAY	NOME	ST. MICHAEL
BAIRD INLET	HOOPER BAY	NORTON BAY	STEPOVAK BAY
BAIRD MOUNTAINS	ILIAMNA	NUNIVAK ISLAND	SUTWIK ISLAND
BARROW	KAGUYAK	POINT HOPE	TELLER
BARTER ISLAND	KARLUK	POINT LAY	TESHEKPUK
BEECHEY POINT	KENAI	PORT MOLLER	TRINITY ISLANDS
BENDELEBEN	KISKA	RAT ISLANDS	UGASHIK
BLACK	KODIAK	SAGAVANIRKTOK	UMNAK
CANDLE	KOTZEBUE	SAMALGA ISLAND	UNALAKLEET
CHIGNIK	KUSKOKWIM BAY	SEGUAM	UNALASKA
COLD BAY	KWIGUK	SELAWIK	UNIMAK
DELONG MOUNTAINS	MARSHALL	SELDOVIA	WAINWRIGHT

Additionally, the map in Appendix B should be updated to reflect sea otter and polar bear critical habitat designations.

- 2) **We recommend the Prohibitions section (Part I. C.) include timing restrictions (as in AKG375000[EPA 2007]) prohibiting activities from September 1-April 30 within 4.0 nm of locations that are documented to have been used by 125 or more Steller's eiders as wintering areas.** Our information indicates that 125 or more wintering Steller's eiders have recently been documented in the following places: 1) the coastal seaward waters from Tununuk to Toksook Bay on Nelson Island; 2) the south side of Nunivak Island from Cape Mohican to Atahgo Point; 3) the coastal seaward waters from the south end of Carter Spit north to Jacksmith Bay; 4) Goodnews Bay; 5) Chagvan Bay; 6) Egegik Bay; 7) Ugashik Bay; 8) Bechevin Bay; 9) Cape Lapin; 10) Akutan Harbor; 11) Waters of Unalaska Bay south of Amaknak Island; 12) the coastline between Cape Star on Umnak Island and the western tip of Samalga Island; 13) the south coast of the Ikatan Peninsula between Otter Cove and Cape Pankof on Unimak Island; 14) Thin Point to the east end of Kinzarof Lagoon in Cold Bay; 15) Sanak Islands; 16) Moss Cape near Volcano Bay on the Alaska Peninsula; 17) Bear Bay; 18) Volcano Bay; 19) Coal Bay to McGinty Point; 20) Bay Point to Unga Spit on Unga Island; 21) Zachary Bay on Unga Island; 22) East Head to Popof Island airstrip on Popof Island; 23) Chignik Lagoon; 24) Wide Bay east to the mouth of Pass Creek and Hartman Island; 25) the following locations on Kodiak Island: Ugak Bay, Pasagshak Bay, Cape Chiniak, Kalsin Bay, Middle Bay, Womans Bay, and St. Paul Harbor; 26) Seldovia Bay in Kachemak Bay; 27) Homer Spit to Bishop's Beach; 28) Happy Valley to Clam Gulch in Cook Inlet; and 29) Kirschner Lake outlet to Rocky Cove on the western shore of Cook Inlet.

- 3) We recommend the Individual Permit section (Part I. E.) be amended to explicitly require operators wishing to discharge to critical habitat apply for coverage under an individual permit.

Currently, the proposed draft GP states under Part I. E.2.: *The Regional Administrator may deny coverage under this permit in the following circumstances:*

d. when the US Fish & Wildlife Service believes that consultation under Section 7 of the Endangered Species Act is necessary for facilities proposed in or near marine coastal waters in the following listed Alaska quadrangles to protect Steller's eiders, spectacled eiders, sea otters, or their habitat:

Kodiak	Karluk	Bristol Bay	Atka
Kaguyak	False Pass	Sutwik Island	Adak
Ugashik	Nushagak Bay	Stepovak Bay	Gareloi Island
Naknek	Samalga Island	Simeonof Island	Rat Island
Seldovia	Goodnews Bay	Unimak	Kiska
Dillingham	Hagemeister Island	Unalaska	Attu
Cape Mendenhall	Mt. Katmai	Umnak	Pribilof Islands
	Afognak	Amukta	
Trinity Islands	Iliamna	Seguam	

This list should be amended as follows to include quadrangles containing sea otter, polar bear, Steller's eider, and spectacled critical habitat listed under item 1) above, and the following quads, currently included in the draft GP :

ADAK	DILLINGHAM	MEADE RIVER	SELAWIK
AFOGNAK	FALSE PASS	MT. KATMAI	SELDOVIA
AMUKTA	FLAXMAN ISLAND	MT. MICHELSON	SHISHMAREF
ATKA	GARELOI ISLAND	NAKNEK	SIMEONOF ISLAND
ATTU	GOODNEWS BAY	NOATAK	SOLOMON
BAIRD INLET	HAGEMEISTER ISLAND	NOME	ST. LAWRENCE
BAIRD MOUNTAINS	HARRISON BAY	NORTON BAY	ST. MICHAEL
BARROW	HOOPER BAY	NUNIVAK ISLAND	STEPOVAK BAY
BARTER ISLAND	ILIAMNA	NUSHAGAK BAY	SUTWIK ISLAND
BEECHEY POINT	KAGUYAK	POINT HOPE	TELLER
BENDELEBEN	KARLUK	POINT LAY	TESHEKPUK
BLACK	KENAI	PORT MOLLER	TRINITY ISLANDS
BRISTOL BAY	KISKA	PRIBILOF ISLANDS	UGASHIK
CANDLE	KODIAK	RAT ISLAND	UMNAK
CAPE MENDENHALL	KOTZEBUE	RAT ISLANDS	UNALAKLEET
CHIGNIK	KUSKOKWIM BAY	SAGAVANIRKTOK	UNALASKA
COLD BAY	KWIGUK	SAMALGA ISLAND	UNIMAK
DELONG MOUNTAINS	MARSHALL	SEGUAM	WAINWRIGHT
DEMARCATON POINT			

The Service believes that with the exclusion of these sensitive areas and critical habitat areas, timing restrictions, and the requirement for individual permits (and associated analyses) for dischargers wishing to operate with the prohibited areas, the likelihood of adverse effects to federally protected species are very low. Thus, we encourage the EPA to complete section 7 consultation for authorization of this GP. Please consider our comments in your evaluation of the potential impacts of this proposed GP on threatened and endangered species and submit a request to the Service for concurrence with your determination of potential effects resulting from this action. We understand these comments are presented to you after the close of the official comment period, and we commit to expedite the conclusion of section 7 consultation.

Thank you for the opportunity to comment on the proposed draft GP and for your continued commitment to protect threatened and endangered species. This letter relates only to federally listed or proposed species and/or designated or proposed critical habitat under jurisdiction of the Service. It does not address species under the jurisdiction of National Marine Fisheries Service, or other legislation or responsibilities under the Fish and Wildlife Coordination Act, Migratory Bird Treaty Act, Clean Water Act, National Environmental Policy Act, or Bald and Golden Eagle Protection Act. For more information on the endangered species consultation process, please see http://alaska.fws.gov/fisheries/endangered/consultation_guide.htm. If you have any questions, please contact me at (907) 271-2066 and refer to consultation number 2010-0072.

Sincerely,



Kimberly Klein
Endangered Species Biologist

cc: Rick Cool, EPA

Literature Cited

Environmental Protection Agency. 2007. AKG-37-5000 Authorization to Discharge Under the National Pollutant Discharge Elimination System for Alaskan Small Suction Dredge Placer Miners [General Permit No.: AKG-37-5000]. Online at:
<http://yosemite.epa.gov/R10/WATER.NSF/NPDES+Permits/General+NPDES+Permits>